

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Anderson County  
J. Cordell Maddox, Jr., Circuit Court Judge  
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RECEIVED

MAR 23 2016

SC SUPREME COURT

LANDON T. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001588

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err in finding Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate possible defenses?

## STATEMENT

### **Relevant Facts**

In the early morning hours of March 22, 2011, fisherman at a Lake Russell boat ramp in Anderson County discovered the bodies of Jason and Candace Sanders in their SUV. App. 12, 1. 4 - 14, 1. 10. Law enforcement soon realized that the Sanders were involved in dealing methamphetamine and had come into conflict with Petitioner Ladon T. Sanders, Jason's son and Candace's step-son, over an outstanding drug debt. *Id.*

When Petitioner was arrested, he gave statements to law enforcement implicating himself and two others in the murders. Cell phone records acquired by the police confirmed that there were multiple calls and text messages between Petitioner and Jason Sanders in the days leading up to the murders. *Id.*

### **Indictment and Guilty Plea**

On June 20, 2011, Petitioner was indicted by the Anderson County Grand Jury for two counts of murder and two counts of possession of a weapon during the commission of a violent crime. App. 97; App. 107-108.

On May 9, 2012, Petitioner entered a guilty plea before the Honorable R. Lawton McIntosh. Scott Robinson represented Petitioner and Assistant Solicitor Rame Campbell represented the State. The State and defense requested that the trial court accept a negotiated sentence of thirty years imprisonment. App. 5, 1. 3 - 7, 1. 17.

When the court expressed concern about the relative leniency of the sentence, both law enforcement and the State noted that they had serious concerns about the reliability and credibility of their witnesses, whom the prosecution characterized as "unsavory." App. 18, 1. 4 - 20, 1. 9. After hearing emotional testimony from the family of both the deceased and Petitioner, the trial

court reluctantly accepted the guilty plea and negotiated sentenced Petitioner to thirty years imprisonment. App. 35, l. 19 - 36, l. 13.

### **PCR Application and Evidentiary Hearing**

On February 12, 2013, Petitioner filed an application for post-conviction relief. App. 38 - 50. On June 3, 2013, the State filed a Return. App. 51 - 57. On February 19, 2014, an evidentiary hearing was held before the Honorable J. Cordell Maddox, Jr. Petitioner was represented by Linda V. Whisenhunt. The State was represented by Assistant Attorney General John W. Whitmire. Plea counsel and Petitioner both testified at the hearing.

#### Hearing Testimony of Plea Counsel

Plea counsel claimed that he had provided Petitioner with all relevant discovery materials that he received from the State. App. 66, ll. 2-7. When asked about whether he provided Petitioner with copies of the police report showing that they had recovered thirty-nine fingerprints from the deceased's car, counsel defensively stated that he did not believe the fingerprint evidence was relevant as Petitioner had admitted to shooting into the car from a distance. App. 70, l. 10 - 73, l. 23.

Plea counsel recalled that Petitioner had no alibi defense and had confessed to the crime after being arrested. *Id.* When asked about whether he investigated Petitioner's telephone records to determine whether Petitioner had an alibi defense, counsel evasively reiterated that Petitioner had received copies of all of the discovery materials that the State had provided the defense. App. 73, ll. 11-23.

#### Hearing Testimony of Petitioner

Petitioner attributed his admission of guilt before Judge McIntosh to not understanding his rights and to having been misinformed of the consequences of his guilty plea by counsel. App. 83, l.

16 - 84, l. 11. Petitioner testified that he was still yet to receive all of the discovery materials in his case. App. 84, ll. 12-25.

In the discovery materials that he did receive, Petitioner stated that there were multiple references to cell phone records, but that there were no actual cell phone records. Petitioner faulted counsel for not investigating the cell phone records as they “would be in my favor”. App. 85, ll. 21-23. Petitioner further testified that the fingerprints found in his father’s SUV would have shown that there were other people, beyond his two conspirators and the two deceased present during the shooting. App. 86, l. 1 - 87, l. 20.

Petitioner believed these unknown persons would have exonerated him. *Id.* Petitioner also stated that plea counsel failed to investigate whether Petitioner’s signature on a written confession to the murders was genuine or a forgery. *Id.* On cross-examination, Petitioner denied committing the murders. App. 90, ll. 2-3.

### **Order of Dismissal**

On July 15, 2015, the PCR court issued a written Order of Dismissal denying Petitioner’s application. App. 97 - 106. Judge Maddox ruled that Appellant had failed to prove counsel was ineffective for not independently investigating the State’s evidence against Petitioner. App. 103.

The PCR court further ruled that Petitioner had freely and voluntarily pled guilty and that counsel’s conducted an adequate independent investigation into the circumstances surrounding the murders. *Id.* The court also determined that Petitioner had failed to demonstrate how plea counsel’s allegedly ineffective investigation prejudiced Petitioner. App. 104.

## ARGUMENT

**The PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently pled guilty where Petitioner based his decision to plead guilty on plea counsel's advice when Petitioner had no knowledge of plea counsel's failure to investigate possible defenses.**

Under the Sixth Amendment to the United States Constitution, all criminal defendants are entitled to the effective assistance of counsel. This applies with equal force to those defendants that plead guilty. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges based on ineffective assistance of counsel). The United States Supreme Court has held that “[g]uilty pleas are no more foolproof than full trials to the court or jury. Accordingly, we take great precautions against unsound results.” *Brady v. United States*, 397 U.S. 742, 758 (1970).

In the context of a guilty plea, an “unsound result” occurs when a defendant does not freely, intelligently, and voluntarily plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969) (a defendant’s decision to plead guilty must be knowingly and voluntarily made); see also *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980) (the record must reflect that the defendant freely and intelligently waived his constitutional trial rights and had a full understanding of the consequences of the plea).

The difference “between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea.” *Berry v. State*, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). However, “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

Trial counsel also has a duty “to discover all reasonably available mitigation evidence and

reasonable available evidence tending to rebut any aggravating evidence introduced by the State” prior to advising a client to plead guilty. *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); see *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007) (“[w]ithout a doubt, [a] criminal defense attorney has a duty to investigate”) (internal quotation omitted).

At the evidentiary hearing, Petitioner testified that counsel failed to investigate the numerous fingerprints found in the deceased’s car to determine if there were other people present at the scene of the murders and failed to investigate telephone records which would have been “favorable” to Petitioner. App. 85, ll. 21-23; *Praylow v. Martin*, 761 F.2d 179 (4th Cir. 1985) (a defendant’s interest in pleading guilty does not relieve counsel of his duty to investigate possible defenses). Counsel stated that he also failed to independently investigate the circumstances relating to Petitioner’s confession. App. 86, l. 1 - 87, l. 20.


Counsel admitted that he did not investigate this evidence because he did not believe that they were relevant to Petitioner’s defense. App. 70, l. 10 - 73, l. 23; *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (citing *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597) (At a minimum, counsel’s duty to independently investigate client’s case encompasses the duty to make an independent investigation of the facts and circumstances of the case).

Despite, apparently not having reviewed all of the evidence in Petitioner’s case, plea counsel strongly recommended that Petitioner plead guilty rather than stand trial. App. 5, l. 3 - 7, l. 17. Moreover, Petitioner’s decision to plead guilty did not relieve plea counsel of his duty to conduct a reasonable and independent investigation into possible defenses. Accordingly, the PCR court erred in finding Petitioner knowingly, voluntarily, and intelligently plead guilty when “there is a reasonable probability that, but for counsel’s errors, [Petitioner] would not have plead guilty and would have insisted on going to trial.” *Hill*, 474 U.S. at 57-59.

**CONCLUSION**

Based on the foregoing reason, Petitioner Landon T. Sanders' petition for writ of certiorari should be granted to allow full briefing on the issue.

Respectfully submitted,



John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO ANDERSON COUNTY  
J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

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LANDON T. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001588

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PETITION TO BE RELIEVED AS COUNSEL

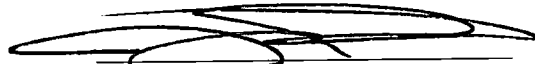
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Counsel for Landon T. Sanders states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on February 19, 2104. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Landon T. Sanders.

Respectfully submitted,



John H. Strom  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 3rd day of February, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

LANDON T. SANDERS,

PETITIONER,

V.

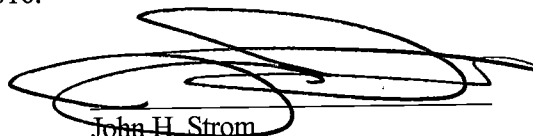
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001588

CERTIFICATE OF SERVICE


I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Patrick Schmeckpeper, Esquire and Landon T. Sanders, #350795, at Lee Correctional Institution this 3rd day of February, 2016.



John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3rd day  
of February, 2016.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025.